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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

FLETCHER CARSON, Plaintiff and Appellant, v. JOHN LINDENMEYER, Defendant and Respondent.	A149698 (Marin County Super. Ct. No. CIV-1302155)

Defendant John Lindenmeyer moves to dismiss the appeal of plaintiff Fletcher Carson on the ground that Carson's notice of appeal was untimely filed. We agree, grant the motion, and dismiss the appeal.

BACKGROUND

Plaintiff Fletcher Carson rented a home from defendant John Lindenmeyer. They also entered into a business relationship that ultimately resulted in Lindenmeyer losing $250,000 due to a fraudulent wire transfer. The relationship soured, and litigation ensued. Specifically, Carson sued Lindenmeyer for trespass, malicious prosecution, intentional infliction of emotional distress, breach of contract, and retainer of security deposit, and Lindenmeyer filed a cross-complaint for breach of contract, common counts, fraud, breach of contract, and dishonored check.

In June 2016, a jury found in favor of Carson on his claims for trespass, malicious prosecution, and retainer of security, awarding him damages of $19,895. The jury found in favor of Lindenmeyer on his claims for common counts and dishonored check, awarding him damages of $246,122.12.

On August 8, the trial court entered a "judgment in conformity the jury verdict." The judgment itemized the jury's verdict and amount of damages awarded on each cause of action, and entered judgment in favor of Carson against Lindenmeyer for $19,895 and in favor of Lindenmeyer against Carson in the amount of $246,122.12. It purported to attach a copy of the jury verdict form, but the form was inadvertently omitted.

On August 29, an amended judgment was entered. The opening paragraph of the amended judgment stated: "Judgment in this matter was entered on August 8, 2106. The court mistakenly failed to attach the jury verdict to said judgment. Accordingly, this amended judgment is entered, correcting the mistake by attaching the jury verdict." Other than appending the jury verdict form, the judgment and the amended judgment are identical.

On October 17, 2016 Carson, acting in propria persona, filed a notice of appeal from the August 29 amended judgment.

On August 30, 2018, Lindenmeyer moved to dismiss Carson's appeal for want of jurisdiction. He contends that the only appealable judgment was the judgment entered on August 8, 2016. This is so, he argues, because the amended judgment did not substantially modify the judgment and thus did not supersede the original judgment for purposes of the time period to appeal. According to Lindenmeyer, as the original judgment was served on the parties on August 9, 2016, the 60-day deadline for filing a notice of appeal was October 10, and Carson belatedly filed his notice of appeal on October 17.

Carson's two-page opposition claims this is merely another one of Lindenmeyer's "tactical maneuvers," is "simply a continuing strategy of legerdemain to suppress the actual facts of the case," and is "based on a technicality that no lay person could conceive of." He also contends "the judgment without the verdict forms is a substantial error that requires change, and such change was made by the Superior Court in issuing a revised judgment containing the verdict forms. This was a complex case containing multiple complaints and multiple cross complaints, and would be difficult to pull apart and understand without the verdict forms." Carson urges that this court "be available for

even laypersons to argue their case, without the advantages of learning tricks of the trade."

DISCUSSION

It is well settled that only an amended judgment that makes a substantial modification will supersede the original judgment for purposes of filing a notice of appeal. The applicable law was summarized in *Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 842–843:

"The resolution of this issue turns on whether the second . . . judgment superseded the original judgment for purposes of California Rules of Court, rule 8.104. California courts have articulated the applicable test as whether the revised judgment results in a 'substantial modification' of the judgment. (*Dakota Payphone* [*v. Alcaraz* (2011)] 192 Cal.App.4th [493], 504–508; see *Stone v. Regents of University of California* (1999) 77 Cal.App.4th 736, 743–744 (*Stone*).) If so, the revised judgment supersedes the original and becomes the final, appealable judgment in the action." (*Dakota Payphone*, at p. 504.) If not, any changes are considered to relate back to the original judgment and the time to appeal runs from the entry of the first judgment. (*Ibid*.)

"A 'substantial modification' is defined as one 'materially affecting the rights of the parties.' (*Dakota Payphone*, *supra*, 192 Cal.App.4th at p. 505; see *Stone, supra*, 77 Cal.App.4th at p. 744.) In other words, '[t]he crux of the problem . . . is whether there is a substantial change in the rights of the parties such that allowing an amendment nunc pro tunc (relating back to the original judgment) would unfairly deprive them of the right to contest the issue on appeal. . . .' (*Dakota Payphone*, at p. 506.) 'Thus, it is ultimately the parties' ability to challenge the ruling that is key. The right we are concerned with materially affecting is the right to appeal.' (*Id.* at p. 508.) So, for example, in *Dakota Payphone*, the trial court modified the default judgment to strike the portion of the damages award that was in excess of the damages requested in the complaint. (*Id.* at p. 499.) While the result reduced the award by over $4 million, the Court of Appeal noted that the real issue was not the size of the award, but whether the defendant's right to appeal was affected by the amendment, and concluded that it was not, stating that

'[t]hough the monetary positions of the litigants have been changed, in doing so the trial court did not deprive the parties of their ability to challenge any portion of the judgment.' (*Id.* at p. 509.) In other words, if 'a party can obtain the desired relief from a judgment before it is amended, he must act—appeal therefrom—within the time allowed after its entry.' (*George v. Bekins Van & Storage Co.* (1948) 83 Cal.App.2d 478, 481.) Conversely, courts have found a substantial modification where a judgment was amended to require payment by the losing party of an additional nine months of costs (*Stone, supra,* 77 Cal.App.4th at p. 743), or where a damages award was reduced to account for the plaintiff's comparative fault (*Sanchez v. Strickland* (2011) 200 Cal.App.4th 758, 767 (*Sanchez*) [reduction 'materially altered [plaintiff's] rights of recovery because it changed the formula used to calculate damages']).'' (See also Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2017) ¶¶ 3:56–3:56.1e, pp. 3-29–3-31.)

Here, the amended judgment did not materially affect the rights of the parties, as it made no substantive changes. The original judgment correctly listed the jury's verdict cause-of-action by cause-of-action, and entered judgment in Carson's favor on his complaint in the amount of damages awarded by the jury and in Lindenmeyer's favor on his cross-complaint in the amount of damages awarded by the jury. The amended judgment merely corrected a clerical error by attaching the verdict form on which the judgments were based. It thus did not supersede the original judgment, and the time to appeal ran from entry of the original judgment. (See Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra,* ¶ 3:56.2, p. 3-31 ["if the amendment merely corrects a *clerical error* and does not involve the exercise of judicial discretion, the original judgment remains effective as the only appealable final judgment"].) Because the original judgment was entered on August 8, 2016 and served the next day, Carson had until Monday, October 10, 2016 (October 8 being a Saturday) to file his notice of appeal. Because he did not file it until October 17, 2016, his notice was untimely and this court lacks jurisdiction to hear his appeal.

On a final note, Carson apparently suggests that as a self-represented party he should not be bound by a rule that a layperson would supposedly not understand. He is wrong: "Pro. per. litigants are held to the same standards as attorneys. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985 ['A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.'] . . . .)" (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.)

DISPOSITION

Lindenmeyer's motion to dismiss the appeal is granted. The appeal is hereby dismissed.

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Richman, Acting P.J.

We concur:

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Stewart, J.

_____
Miller, J.

Carson v. Lindenmeyer (A149698)